



BILLING CODE 7709-01-P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Special Withdrawal Liability Rules; The Cultural Institutions Pension Plan

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Notice of pendency of request

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation (“PBGC”) has received a request from The Cultural Institutions Pension Plan for approval of a plan amendment providing for special withdrawal liability rules. Under § 4203(f) of the Employee Retirement Income Security Act of 1974 and PBGC’s regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if PBGC determines that the rules apply to an industry with characteristics that make use of the special rules appropriate and that the rules will not pose a significant risk to PBGC. Before granting an approval, PBGC’s regulations require PBGC to give interested persons an opportunity to comment on the request. The purpose of this notice is to advise interested persons of the request and to solicit their views on it.

DATES: Comments must be submitted on or before [INSERT DATE 45 DAYS AFTER

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for submitting comments.
- Email: reg.comments@pbgc.gov.
- Fax: 202-326-4224.
- Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit

Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005-4026.

Comments received, including personal information provided, will be posted to

<http://www.pbgc.gov>. Copies of comments may also be obtained by writing to

Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation,

1200 K Street, NW., Washington, D.C., 20005-4026, or calling 202-326-4040 during

normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Theresa Anderson, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street, NW, Washington, DC 20005-4026, 202-326-4020. (For TTY/TTD users, call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-326-4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“ERISA”),

provides that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under § 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) reduces its contribution base units by seventy percent in each of three consecutive years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, § 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work

within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in § 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under § 4208(d)(1) of ERISA, “[a]n employer to whom §420[3](b)(relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.” Under § 4208(d)(2) of ERISA, “[a]n employer to whom §420[3](c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.”

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in § 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the

insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 C.F.R. Part 4203) prescribes procedures for a multiemployer plan to ask PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. The regulation may be accessed on PBGC's website (<http://www.pbgc.gov>).

Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the Federal Register, and to provide interested parties with an opportunity to comment on the request.

The Request

PBGC received a request, dated January 11, 2011, from The Cultural Institutions Pension Plan ("Cultural Plan"), which the Cultural Plan subsequently amended, for approval of a plan amendment providing for special withdrawal liability rules. PBGC's summary of the actuarial reports provided by the Cultural Plan may be accessed on PBGC's website (<http://www.pbgc.gov>). A copy of the complete filing may be requested from the PBGC Disclosure Officer. The fax number is 202-326-4042. It may also be obtained by writing the Disclosure Officer, PBGC, 1200 K Street, N.W., Suite 11101, Washington, D.C. 20005.

In brief, the Cultural Plan is a multiemployer plan covering cultural institutions, such as zoos and museums, and New York City-funded daycare programs. The Cultural

Plan's submission represents that the industry for which the rule is requested has characteristics similar to those of the construction industry. The Cultural Plan submitted an amendment prescribing special withdrawal liability rules, which, if approved by PBGC, would be retroactively effective as of July 1, 2009, to the extent permitted by ERISA

§ 4214(a). Under the proposed amendment, complete withdrawal of an employer would occur only: (a) under conditions similar to those described in ERISA § 4203(b)(2) for the building and construction rule; (b) upon the employer's sale or transfer of a substantial portion of its business or assets to another entity who performs such work in the jurisdiction of the collective bargaining agreement but has no obligation to contribute to the Cultural Plan; or (c) when the employer ceases to have an obligation to contribute in connection with the withdrawal of every or substantially all employer(s) from the Cultural Plan. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA § 4208(d)(1). The proposed amendment would not apply to any employer who made contributions for non-collectively-bargained employees in the year of withdrawal and the four preceding plan years. The request includes actuarial data to support the plan's contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

Issued at Washington, D.C., December _15th_, 2011.

Joshua Gotbaum
Director

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